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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,685	08/07/2006	Fabian Fagotti	04306/0204990-US0	9466
7278	7590	07/18/2008	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			ITALIANO, ROCCO	
			ART UNIT	PAPER NUMBER
			3746	
			MAIL DATE	DELIVERY MODE
			07/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/596,685	<b>Applicant(s)</b> FAGOTTI, FABIAN	
	<b>Examiner</b> ROCCO ITALIANO	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/21/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to the limitation that "it" refers to in line 11 of claim 1.

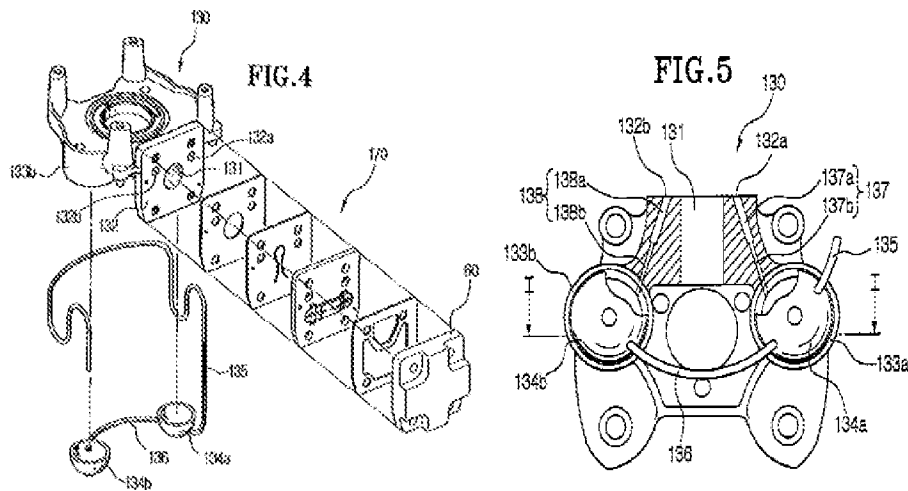
### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

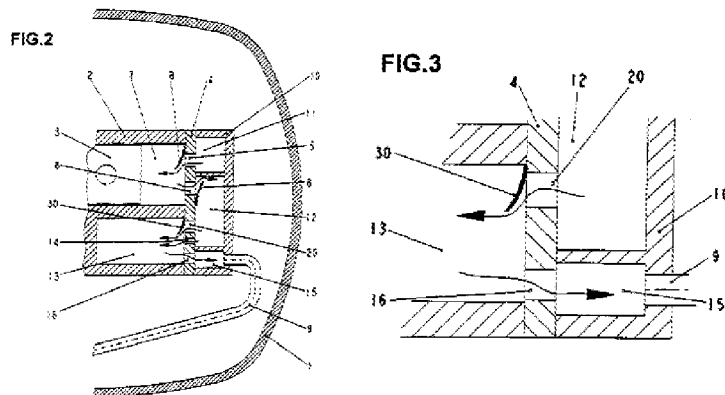
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seo U.S. 2002/0136646 A1 in view of Fogotti WO 99/53200.

In regards to claim 1, Seo discloses a discharge system for compressors of the type which comprises: a cylinder block (130) defining a compression chamber (131); a first discharge chamber (62) (see paragraph 7 and Fig.1) receiving an intermittent gas mass flow from the compression chamber (131); a second discharge chamber (133b) in direct communication with the first discharge chamber (62); a third discharge chamber (133a) in constant fluid communication with the second discharge chamber (133b) and opened to a discharge tube (135) (see Fig. 4-5).



The disclosure differs from the claimed invention in that no valving means is explicitly disclosed communicating the first (62) and the third (133a) discharge chambers. However Fogotti teaches of an analogous discharge system for a hermetic compressor wherein a valving means (30) is provided communicating discharge chamber (12) and discharge (13) wherein the valve (30) assumes an open position when a gas mass flow passing from a compression chamber (7) to a first discharge chamber (12) reaches a determined gas mass flow valve, and a closed position blocking fluid communication between the discharge chambers (12, 13) when the gas mass flow reaches a value lower than the determined gas mass flow value (see Fig. 2-3).



With respect to claim 2, the valving means (30) as taught by Fogotti is provided in a discharge orifice provided between discharge chambers (12) and (13).

In regards to claim 3, Seo discloses a valve plate (170) between the compression chamber (131) and the first discharge chamber (62) carrying at least one suction valve (71a) and one discharge valve (72a) (see Fig. 2 and 4). The valving means (30) as taught by Fogotti is in the form of a vane mounted to an analogous valve plate (4) (see page 8, lines 13-15).

With respect to claims 4-5, Fogotti teaches that the valving means (30) is a valve blade which is affixed to a valve plate (4) as seen in Fig. 2 and 3 (see page 8, lines 13-15). Fogotti teaches further of a suction valve (8) which is detailed as a vane and is of the similar type as valving means (30). Even though Fogotti does not explicitly disclose and illustrate a valve blade incorporating a suction valve, it is commonly known in the art to incorporate a valve, of a "vane" type as shown, in to a valve blade. Evidence of such an arrangement is disclosed by Seo wherein a suction valve (71a) is incorporated into a valve blade (71) (see Fig. 2 according to Seo).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure according to Seo with the teachings of Fogotti by including a valving means (30) in a "third discharge orifice" in order to obtain a compressor wherein the flow of compressed gas within the discharge muffler may be controlled as a function of the pressure differential between the chambers of the discharge muffler.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROCCO ITALIANO whose telephone number is (571)270-3761. The examiner can normally be reached on Mon - Fri (Alt Fri Off) 9-5 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon C. Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3746

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
Unit 3746

R.I.  
07/10/2008